IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6729 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATILAL G PATEL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BR PARIKH for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 17/08/2007

ORAL JUDGMENT

1. The petitioners-daily wagers, have approached this Court under Article 226 of the Constitution of India for mandamus to the respondent State and Forest

Department for claiming parity in respect of their wages vis-a-vis the regularly employed persons in the Forest Department and also seeking regularisation of services.

2. The facts in brief deserve to be set out as under:

2.1 The petitioners who were working as daily wagers in the Forest Department have filed this petition as stated hereinabove seeking parity in respect of the wages and emoluments vis-a-vis the regularly employed personnel in the Forest Department. The petitioners are daily wagers and according to their claim they are working and discharging the duties of class-IV employees in the respondent department. The petitioner no.1 was initially engaged as watchman-cum-labourer and the petitioner no.2 was engaged as labourer and since years they were discharging their duties as such. The petitioners have submitted that the petitioners deserve to be regularised in view of the resolution dated 17.10.88 in respect of the daily wagers of PWD.

3. Mr B.R Parikh, learned advocate appearing for the petitioners has submitted that the petitioners deserve to be treated at par with the daily wagers of PWD as in their favour there enures a government resolution dated 17.10.88 whereunder they are given the benefits. The said benefits could not have been denied to the present petitioners as it would amount

to discriminating against the petitioners. The petitioner had completed more than 240 days and therefore they ought to have been regularised.

4. Learned AGP appearing for the respondent State resisted this petition and invited the attention of this Court to the decision of the Apex Court in the case of Delhi Development Horticulture Union vs. Delhi Administration and Ors. wherein the Apex Court held that such employees were not entitled to claim parity or right of regularisation and even wages. Learned AGP has also relied upon the resolution dated 22.12.99 whereunder relying upon the Apex Court's observation in the case of Delhi Development (supra), the government has specifically excluded the daily wagers of Forest and Environment Department from the purview of resolution dated 17.10.88 which enures in favour of only the daily wagers of PWD. He has submitted that this resolution has not been challenged by the petitioner. He has in alternative submitted that better, efficacious alternative remedy is by way of Industrial Dispute which the petitioners have not availed and on this count also the petition deserves to be dismissed.

5. This Court has heard learned counsel for the parties. The observations made by the Apex Court while deciding the case of the Delhi Development (supra) would cover the facts and circumstances of the present case also. Mr Parikh could not make any distinction from the facts applicable in the present

case from those under consideration of the Apex Court in the case of Delhi Development (supra) and hence he could not submit with more force in favour of the petitioner. In view of the averments made in the reply affidavit this Court is of the considered view that the petitioner's cannot claim parity with the employees of PWD and they have been rightly excluded by the resolution dated 22.12.99. In view of the same, the petition deserves to be rejected.

6. In view of the aforesaid, this petition is hereby dismissed. Rule is discharged.

(S.R.BRAHMBHATT, J.)

Divya//